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### APPEAL TRIBUNAL DECISION

**Docket number:** 20 0649 **Hearing date:** June 26, 2020

**CLAIMANT:**

BRYAN EVANS

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Bryan Evans None

#### CASE HISTORY AND FINDINGS OF FACT

The claimant filed an appeal against a May 1, 2020 determination that denied benefits under AS 23.20.362 on the grounds that the claimant received a deductible pension. The Division mailed the determination to the claimant’s address of record on May 4, 2020. The claimant’s appeal was filed on June 8, 2020, giving rise to the issue of the timeliness of the claimant’s appeal.

The claimant received the determination and did not agree with it. He had difficulty getting through to the Division because of the volume of call the Division received in response to the COVID-19 pandemic. When he got through by phone, he waited for someone to call him back. His appeal was filed on June 8, 2020 when his call was returned.

#### PROVISIONS OF LAW

**AS 23.20.340 provides in part;**

(e) The claimant may file an appeal from an initial determination or a redetermination under (b) of this section not later than 30 days after the claimant is notified in person of the determination or redetermination or not later than 30 days after the date the determination or redetermination is mailed to the claimant's last address of record. The period for filing an appeal may be extended for a reasonable period if the claimant shows that the application was delayed as a result of circumstances beyond the claimant's control.

(f) If a determination of disqualification under AS 23.20.360, 23.20.362, 23.20.375, 23.20.378 ‑ 23.20.387, or 23.20.505 is made, the claimant shall be promptly notified of the determination and the reasons for it. The claimant and other interested parties as defined by regulations of the department may appeal the determination in the same manner prescribed in this chapter for appeals of initial determinations and redeterminations. Benefits may not be paid while a determination is being appealed for any week for which the determination of disqualification was made. However, if a decision on the appeal allows benefits to the claimant, those benefits must be paid promptly.

**8 AAC 85.151 provides in part;**

1. An appeal may be filed with a referee, at any employment center, or at the central office of the division and, if filed in person, must be made on forms provided by the division. An appeal must be filed within 30 days after the determination or redetermination is personally delivered to the claimant or not later than 30 days after the date the determination or redetermination is mailed to the claimant’s last address of record. The 30-day time period will be computed under Rule 6 of the Rules of Civil Procedure. However, the 30-day period may be extended for a reasonable time if the claimant shows that the failure to file within this period was the result of circumstances beyond his or her control.

#### CONCLUSION

An appellant has the burden to establish some circumstance beyond the appellant’s control prevented the timely filing of the appeal.

The purposes and policies of the Act are not served by a strict application of the procedural requirements to the detriment of a person the statute is intended to serve, especially when no apparent prejudice would otherwise be caused to the Department. Estes v. Department of Labor*,* 625 P.2d 293 (Alaska 1981).

The claimant made efforts to file an appeal shortly after the determination was received. His appeal was filed two days after the allowable period to file an appeal. Considering the Division’s inability to answer the large amount of phone calls during that time, the claimant’s delay in filing an appeal was beyond his control.

#### DECISION

The claimant’s appeal from the notice of determination issued on May 1, 2020 is **ACCEPTED** as timely filed.

#### CASE HISTORY

The May 1, 2020, determination denied the claimant’s benefits under AS 23.20.362. The issue before the Appeal Tribunal is whether the claimant’s benefits should be reduced due to receipt of a periodic payment and whether the claimant is eligible for an additional weekly payment under the CARES Act.

#### FINDINGS OF FACT

The claimant established a claim for unemployment insurance benefits effective April 12, 2020. The claimant was found to be eligible for a weekly benefit of $370. The claimant receives a monthly pension from the United Stated Coast Guard in the amount of $2,550. The claimant’s benefit claim is based on the period including all four calendar quarters of 2019. The claimant was employed by the United States Coast Guard during a portion of that period.

The Division reduced the claimant’s benefits based on a weekly pension amount of $588.46, which results in no eligibility for benefits.

#### PROVISIONS OF LAW

**AS 23.20.362, Disqualifying or deductible income.:**

(a) The amount of benefits payable to an insured worker for a week of unemployment which begins in a period for which the insured worker receives a pension, retirement or retired pay, annuity, or similar periodic payment that is based on the previous work of the insured worker, shall be reduced by the amount of the payment that is attributable to that week. The requirements of this subsection apply only if

(1) the pension, retirement or retired pay, annuity, or similar periodic payment is provided under a plan maintained or contributed to by an employer of the insured worker during the base period of the insured worker; and

(2) for a periodic payment other than a payment made under the Social Security Act, the Railroad Retirement Act of 1974, or earlier versions of those federal laws, the service performed for an employer by an insured worker after the beginning of the base period or remuneration for those services affects eligibility for, or increases the amount of the pension, retirement or retired pay, annuity, or similar periodic payment.

(b) The reduction of benefits provided in (a) of this section does not apply to that part, if any, of a pension, retirement or retired pay, annuity, or similar periodic payment that is attributable to contributions of the insured worker.

**8 AAC 85.140 Disqualifying or deductible income:**

(a) A monthly payment from a pension, annuity, or similar periodic payment plan that is deductible under AS 23.20.362 will be multiplied by 12 and then divided by 52 to determine the

weekly amount to be deducted.

**CARES Act of 2020, Public Law 116-136 Sec 2104**

1. FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION.— Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents’ allowances) payable for any week shall be equal to— (A) the amount determined under the State law (before the application of this paragraph), plus (B) an additional amount of $600 (in this section referred to as ‘‘Federal Pandemic Unemployment

#### CONCLUSION

The claimant received a monthly pension from an employer for which he worked during the base period his unemployment claim is based on. The pension is deductible under AS 23.20.362. The weekly amount was calculated correctly under regulation 8 AAC 85.140.

The claimant argued that he should be eligible for benefits intended to help workers affected by the COVID-19 pandemic. Further, he felt that it was not fair that military retirees should be denied unemployment benefits after having served their country.

The CARES Act of 2020, Public Law 116-136, signed into law on March 27, 2020, temporarily provides an additional $600 weekly payment to claimants who are eligible for a weekly unemployment benefit in section 2104. The federal code requires that a claimant must be eligible for a benefit under the requirements of the laws of the state in which the claimant is claiming regular unemployment benefits in order to eligible for the additional weekly benefit.

In Scott, Com. Dec. 87H-EB-162, June 18, 1987, the Commissioner held in part:

*Neither the Appeal Tribunal nor I have any jurisdiction to hold contrary to the clear wordage of the law.*

The claimant’s monthly pension is deductible each week as long his military wages are in his base period. The law provides no exception for military pensions and, as in Scott, the Tribunal has no authority to find contrary to the law.

The claimant is advised to apply for Pandemic Unemployment Assistance for the period under review here.

#### DECISION

The determination issued on May 1, 2020 is **AFFIRMED**. Benefits are **DENIED** for the weeks ending April 18, 2020 through April 10, 2021.

#### APPEAL RIGHTS

This decision is final unless an appeal is filed to the Commissioner of Labor and Workforce Development within **30 days** after the decision is mailed to each party. The appeal period may be extended only if the appeal is delayed for circumstances beyond the party's control. A statement of appeal rights and procedures is enclosed.

Dated and mailed on June 30, 2020.

Rhonda Buness, Appeals Officer